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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

SHARIF AHMED,

Defendant and Appellant.

G027769

(Super. Ct. No. 00NF0729)

OPINION

Appeal from a judgment of the Superior Court of Orange County, Gregg L. Prickett, Judge. Affirmed.

Sally P. Brajevich, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, David P. Druliner, Chief Assistant Attorney General, Gary W. Schons, Assistant Attorney General, Rhonda L. Cartwright-Ladendorf and Sabrina Y. Lane-Erwin, Deputy Attorneys General, for Plaintiff and Respondent.

* * *

THE COURT: *

* Before Sills, P. J., O'Leary, J., and Aronson, J.

After his motion to suppress evidence was denied (see Pen. Code, § 1538.5), Sharif Ahmed pled guilty to possession of marijuana for sale and was placed on five years probation on condition he serve 364 days in jail. On appeal, Ahmed complains the motion to suppress should have been granted because the evidence was found as the result of an illegal search. Relying on *People v. Robles* (2000) 23 Cal.4th 789, he argues the search was unlawful because the officers were unaware of his probation search condition until after the search was conducted.

Rather than address the legality of the search, the People argue Ahmed waived the right to appeal the denial of the suppression motion. We agree.

Ahmed was represented below by experienced counsel, William A. Dougherty. When Ahmed entered his guilty plea, he initialed the box on the guilty plea form which reads: “I understand that I have the right to appeal the Superior Court’s denial of my Penal Code Section 1538.5 motion (suppression of evidence motion) in this case. I hereby waive and give up this right.” At the end of the form, Ahmed initialed, and then signed underneath, a statement that reads: “I declare under penalty of perjury that I have read, understood, and personally initialed each item above and discussed them with my attorney, and everything on this form is true and correct.”

Below this, Ahmed’s attorney signed a declaration under penalty of perjury which reads, in part: “I am attorney of record and I have explained each of the above rights to the defendant, and having explored the facts with him/her and studied his/her possible defenses to the charge(s), I concur in his/her decision to waive the above rights and to enter a plea of guilty. I further stipulate this document may be received by the court as evidence of defendant’s intelligent waiver of these rights” Although the court personally advised Ahmed of the rights he was waiving in pleading guilty, it did not expressly advise him of the consequences of his waiver of the right to appeal the denial of the suppression motion.

In *People v. Castrillon* (1991) 227 Cal.App.3d 718, we held that a defendant

could waive the right to appeal denial of a suppression motion. We pointed out that a court could rely on “a properly executed written waiver of the statutory right to appeal denial of the suppression motion,” even in the absence of an “oral recitation” of that right by the trial court and “an oral waiver by the defendant.” The written waiver was sufficient “unless a doubt is raised that [defendant] understood and knowingly waived his rights.” (*Id.* at p. 722; see also *People v. Panizzon* (1996) 13 Cal.4th 68, 84.) Here, as in *Castrillon*, Ahmed executed a written waiver, and nothing in the record suggests he did not understand or knowingly waive this right.

Ahmed insists the waiver could not have been knowing because his attorney filed a notice of appeal contesting denial of the motion. The understanding of defendant’s trial counsel (even if such could be gleaned from the filing of a notice of appeal), while interesting, hardly tells us whether the waiver was knowingly and intelligently given by the defendant. Ahmed then asserts the burden to prove the waiver was validly given rests with the People. As *Castrillon* makes clear, however, evidence of a written waiver, such as the one in the record here, meets that burden. Finally, relying on *People v. Rosso* (1994) 30 Cal.App.4th 1001, Ahmed argues that any waiver was invalid because he was not orally advised by the court, and did not orally waive, this right. The same argument was rejected in *Castrillon*, and Ahmed does not offer any persuasive reason why we should revisit that decision.

The judgment is affirmed.